

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I pertaining to dog training)
)
)

NOTICE OF PUBLIC HEARINGS
AND EXTENSION OF COMMENT
PERIOD ON PROPOSED
ADOPTION

TO: All Concerned Persons

1. On May 12, 2017, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-473 pertaining to the proposed adoption of the above-stated rule at page 585 of the 2017 Montana Administrative Register, Issue Number 9.

2. The notice of proposed agency action is amended as follows because the department is considering alternative language from the original proposal and the required number of persons has requested a public hearing.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 6 Office, 54078 U.S. Highway 2 West, Glasgow, Montana, to consider the proposed adoption of the above-stated rules.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed adoption of the above-stated rule.

3. Public comment was collected on the proposed rule for 29 days from May 12, 2017 to June 9, 2017. Based on public comment, the department is proposing an alternative to be considered in conjunction with the original proposed adoption. An extension of the comment period is necessary to address the alternative language. The rule as proposed provides as follows, new matter underlined, deleted matter interlined:

NEW RULE I PERMIT PERMISSION TO TRAIN DOGS IN UPLAND GAME BIRD NESTING AREAS (1) For purposes of this rule, the following definitions ~~apply~~ applies:

(a) "bird nesting area" refers to the nesting activities and habitat of upland game birds and migratory game birds. ~~means any area within the state which the targeted game bird(s) could make a reasonable attempt to successfully produce a nest;~~

(b) ~~"game preserve" means an area that is owned and managed by the state or federal natural agency for the purposes of game protection and propagation;~~

(c) ~~"management area" means any property managed by the state or federal natural agency for the purposes of maintaining wildlife habitat, wildlife propagation or public hunting access;~~

(d) ~~"open fields" means any area of natural surroundings where wildlife may naturally occur and may include bird nesting areas, management areas, or game preserves.~~

(2) A person, party, group, or business wishing to train dogs ~~in open fields~~ must apply for a permit by filing an application on a form provided by the department at the regional office in the region where the person will conduct such activity. under the provisions of 87-4-915(5)(a), MCA, has the permission of the director to train dogs within one mile of any bird nesting or management area or game preserve only if live game birds are not killed or captured during training, and if the person, party, group, or business is training:

(a) not more than four dogs per day; or

(b) more than four dogs per day between September 1 and March 31.

(3) ~~Permits to train dogs in open fields expire September 1 of each year.~~ Permission is not granted for training more than four dogs per day per person, party, group, or business within one mile of any bird nesting or management area or game preserve between April 1 and August 31.

(4) ~~Permit holders must follow the terms and conditions set forth in the permit.~~ This rule does not preclude further site-specific management rules or conditions on public and private lands. Landowner permission must still be obtained for training activities.

(5) This rule does not apply to activities otherwise licensed or permitted by Fish, Wildlife and Parks, such as regulated hunting activities, permitted field trials and permits to train dogs with captive game birds.

REASON: This rule proposal is being amended in response to public comments to provide more clarity in language and to minimize impacts of dog training on game bird populations while not unduly limiting dog training activities in Montana.

The purpose of this rule is to limit disturbance and mortality of nesting birds from training large numbers of dogs without unduly restricting training of single or small numbers of dogs. In recent years, the department has received both written and verbal complaints regarding dog training occurrences. The dog training that has been documented includes as many as 60 dogs at one time as well as the use of horses. When this happens during the nesting and brood rearing season, it can result in negative impacts on bird populations and decreased opportunity for the hunting public. Speaking to the value of healthy game bird populations, other states and provinces have similarly implemented restrictions on some types of dog training. In addition to protecting this wild resource, this proposed rulemaking will help keep Montana from being detrimentally set apart as the easiest state in which to train large numbers of dogs.

The Fish and Wildlife Commission was also approached by bird hunters who were noticing a large decrease in the number of available birds in certain areas during the hunting season. The commission in turn requested that the department act to curtail the impacts of large scale dog training during the nesting season.

Section 87-4-915 (5)(a), MCA provides that dogs may be trained in open fields at any time without permission of the director only if (i) live game birds are not killed or captured during training; and (ii) the training is more than one mile from any bird nesting or management area or game preserve. This law codified previously existing department administrative rule language verbatim, and indicates that permission from the director is needed to train dogs within a mile of bird nesting or management areas or game preserves. The language in the proposed rule provides for permission for these activities on a smaller scale during the nesting season and grants permission for larger scale activities outside of the nesting season. Granting this permission will provide clarity and limit administrative process for permission for the public as well as for enforcement purposes.

4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Enforcement Division, Attn: Mike Lee, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail FWPDogTraining@mt.gov, and must be received no later than October 13, 2017.

6. Kaedy Gangstad or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State August 28, 2017.